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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 SPENCER MEYER,

4 Plaintiff,

New York, N.Y.

5 v.

15 Civ. 9796 (JSR)

6 TRAVIS KALANICK,

7 Defendant.

8 -----x

9 January 6, 2016  
10 11:12 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 ANDREW SCHMIDT LAW PLLC

Attorneys for Plaintiff

16 BY: ANDREW SCHMIDT

- and -

17 HARTER, SECREST & EMERY, LLP

BY: JEFFREY A. WADSWORTH

18 BOIES, SCHILLER & FLEXNER LLP

Attorneys for Defendant

19 BY: PETER M. SKINNER

20 RYAN PARK

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(Case called)

THE COURT: Good morning. I should note for the record that Mr. Park is my former law clerk. I never recuse myself when either friends or law clerks appear before me but I cut off all one-on-one personal communication. Usually by the end of the case they are former friends.

So, thank you for your case management plan.

Now, I take it the plaintiff does want a jury trial?

MR. WADSWORTH: Yes, your Honor.

THE COURT: Very good.

So the real dispute, I gather so far as the case management plan is concerned, is whether or not to stay discovery while there is a motion to dismiss. My usual practice is to give the parties the following choice. Either we will have an expedited motion to dismiss schedule and then stay discovery for that very brief period of time, or we will have a more leisurely motion to dismiss schedule but begin discovery, not depositions but document discovery. So the proposal here doesn't seem to fit either of those patterns. So let's see what we can come up with.

So assuming you want to stay discovery on the defense side, what is the quickest you could file your motion to dismiss?

MR. SKINNER: Your Honor, I think the schedule we

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1 proposed is a pretty quick one, given the fact that --

2 THE COURT: Not by my standards.

3 MR. SKINNER: What would the Court consider to be  
4 accelerated?

5 THE COURT: You have already thought about your motion  
6 to dismiss. In fact, you sort of in what you sent me indicated  
7 the grounds that you think you have. If I recall correctly,  
8 you are talking about personal jurisdiction and failure to  
9 state a claim, right?

10 MR. SKINNER: Yes. It is really more failure to state  
11 a claim.

12 THE COURT: So, you know, I know there are only a few  
13 hundred lawyers in your firm or maybe more than a few hundred  
14 but --

15 MR. SKINNER: There is much less than a few hundred,  
16 your Honor.

17 THE COURT: Well, I remember when Boies, Schiller was  
18 about three people. How many lawyers are you now?

19 MR. SKINNER: About 250.

20 THE COURT: Oh, OK, a tiny mom-and-pop operation. So  
21 why can't you file in a week?

22 MR. SKINNER: The only reason I would hesitate to  
23 commit to a week is that not only did we just come into the  
24 case two days ago, so we do have -- while we read the  
25 complaint, we processed it and we think we know what our

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1 arguments are, we have to coordinate with our client to allow  
2 him the opportunity to review whatever it is we file and build  
3 in some time for that.

4 THE COURT: I understand all of that, but my point is  
5 it delays the case to hold up discovery. So I'm very reluctant  
6 to do that unless we can get a motion to dismiss done quickly.  
7 Otherwise, I mean, if you prefer to have document discovery go  
8 forward, then I'm perfectly happy with giving you more time,  
9 but I think that's the dilemma, if you will.

10 MR. SKINNER: I understand, your Honor. I think what  
11 I would ask the Court to do is to split the difference and give  
12 us to the end of next week so we would have essentially ten  
13 days rather than seven.

14 THE COURT: All right. So that would be moving papers  
15 on -- let's see. Today is the 6th. So that would be moving  
16 papers on the 15th.

17 MR. SKINNER: Yes.

18 THE COURT: All right. And how about on the  
19 plaintiff's side for answer?

20 MR. WADSWORTH: So, your Honor, we, of course, would  
21 prefer the plan B between the two choices, with written  
22 discovery proceeding now, with a schedule like the one that we  
23 proposed in the case management plan. If we were to go with  
24 the stay with the more accelerated motion practice, which is  
25 not the route we would --

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1           THE COURT: I'm sorry. I don't see how you are  
2 prejudiced by a quick motion to dismiss schedule. If this case  
3 is going to disappear, you might as well know it before you  
4 expend time on discovery. Where you would be prejudiced is if  
5 this became the basis for a long drawn out delay in your  
6 lawsuit. That never happens in my court. I move my cases, as  
7 you may know, very quickly.

8           So I think the question really is -- you know already,  
9 at least in general terms, what their grounds are -- so how  
10 long would it take you to file answering papers?

11          MR. WADSWORTH: We would ask in that case for two  
12 weeks.

13          THE COURT: OK. Two weeks is very reasonable. So  
14 that's January 29th.

15          Reply papers, let's see, February 4th. And let's look  
16 at February 11th for oral argument.

17          THE CLERK: You are out.

18          THE COURT: I'm out, OK. How about February 10th?

19          THE CLERK: February 10th, a Wednesday, all we have is  
20 argument in the morning.

21          THE COURT: OK. So 4 o'clock on February 10th.

22          And I will undertake to get you a bottom-line  
23 ruling -- this will obviously not be the full opinion but at  
24 least you'll know whether the case is going forward or not --  
25 by no later than February 24th.

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1           So going backwards now to the rest of the case  
2 management plan, it seems to me that document requests can be  
3 served anytime up to February 17th -- but can be served much  
4 earlier than that -- but the response will not be due until  
5 March 1st, one week after my ruling. Is that right?

6           (Pause)

7           I guess one week after the ruling is March 2nd. So I  
8 am going to just write that in. So the plaintiff is free to  
9 not wait around to February 17th, which is the last date to  
10 file -- you can file earlier than that -- but the normal rules  
11 for when a response is due will be changed to March 1st. So  
12 the responses will be due on March 1st. Ditto the very limited  
13 interrogatories that I permit under Local Rule 33.3(a).

14           Now, I think all the other dates are fine. We'll talk  
15 about class certification in a minute, but we'll put this down  
16 now for a final pretrial conference on July 6 at 4 p.m. There  
17 is a possibility I may be out that first week of July, in which  
18 case I'll let you know well in advance and we'll just move it a  
19 few days into the next week.

20           In terms of class certification, my suggestion is,  
21 assuming the case goes forward, that when plaintiff is ready to  
22 move for class certification, you just convene a joint  
23 conference call with the plaintiff and defendant and the Court.  
24 I will set a date for it then. I think it is probably  
25 premature to set the schedule for it. OK?

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1 All right. So I've signed the case management plan  
2 and it will be filed electronically and therefor available to  
3 both sides.

4 Anything else we need to take up today?

5 MR. WADSWORTH: Not from the plaintiff, your Honor.

6 MR. SKINNER: One matter I want to note for the Judge  
7 or comment. I know the plaintiff is seeking a jury trial. I  
8 just want to note defendant reserves his right to oppose that  
9 request. There may be some contractual provisions relevant to  
10 that with respect to the possible waiver of a jury trial in the  
11 defendant's user agreement.

12 THE COURT: OK. That's fine. I'm just putting it  
13 down now as a jury trial that's being asked for by one party  
14 because if they don't ask for it now they waive that right, so.

15 MR. SKINNER: And one other question, your Honor.  
16 Does the stay of discovery, is that a blanket stay that also  
17 covers the 26(a)(1) disclosures?

18 THE COURT: Yes. I think that makes sense.

19 MR. SKINNER: Thank you, your Honor.

20 THE COURT: All right. Very good.

21 MR. WADSWORTH: Your Honor, just some clarification.

22 Third-party discovery, can that go forward?

23 THE COURT: What do you have in mind?

24 MR. WADSWORTH: I am not sure at this point. I wanted  
25 to at least ask it.

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1 THE COURT: Well, I think that's going to present the  
2 same issue. I think the answer to that is no absent some  
3 specific reason why it ought to go forward. If you come up  
4 with a specific reason and want to convene a conference call  
5 with the Court, of course all of this is always subject to  
6 revision in light of changed circumstances.

7 MR. WADSWORTH: Understood, your Honor. Thanks.

8 THE COURT: Very good. Thanks very much.

9 THE CLERK: All rise.

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